IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.469 OF 2003

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Tripat Chamanlal Oberoi ...Petitioner

v/s.

The Municipal Corporation of
Gr.Mumbai & Ors. ...Respondents

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Mr.N.A.Shah with Mr.S.Malik for the Petitioner.
Ms.Nishitha Malik for Respondents Nos. 2 to 5.
Mr.U.J.Makhija with Mr.K.N. Gaikwad for Respondent No.1/BMC.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD MARCH,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the sole arbitrator. The award is dated 25-6-1999.

2. The facts that are material and relevant for deciding this petition are that the Respondent No.1 Bombay Municipal Corporation had entered into a contract for construction of Fire Brigade Station. The disputes and differences arose between parties. In Arbitration Suit No.1114 of 1990 filed by the Petitioner an order dated 11-11-1994 was made referring all disputes and differences to the learned sole arbitrator. The learned arbitrator made the award. Both parties felt aggrieved by that award, therefore, two arbitration petitions were filed in this Court challenging the award being Arbitration Petition No.53 of 1997 and Arbitration Petition No.58 of 1997. Both petitions came to be disposed of by order dated 6th November, 1998. By that order the proceedings were remitted to the learned arbitrator. Two points which were involved in these petitions, on

which remand was ordered, were (i) computation of the actual quantity of steel consumed on the basis of Measurement Book and R.A. Bills and (ii) whether the National Saving Certificates submitted by the Petitioner for getting exemption from giving security deposit are to be returned to the Petitioner.

3. Perusal of the award shows that the learned arbitrator has found that as per the Measurement Book, the quantity of steel consumed is 129.67 metric Tonne. As per the Running Bill the steel consumed is shown at 393.50 metric tonne. The claim of the Petitioner based on structural drawings was that the steel consumed was 775 MT. In the award the learned arbitrator found that the Petitioner is entitled to be paid for the steel consumed as per the Measurement Book i.e. 129.67 MT. That was the finding recorded by the learned arbitrator even in the earlier award. The relevant part in the earlier award reads thus:-

SI.No./FMB	Description	Quantity	Rate	Amount
98/733	M.S.inforcement	17.36	7150	1,24,124.00

	6mm & 100 mm dia	MT	MT	
99/734	Tor steel	112.33	6240	7,00,939.20
	Rebate given by claimants	MT	MT	

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4. Thus, according to the final bill the Petitioner was entitled to payment for 17.36 MT at the rate of 7150 MT and 112.33 MT at the rate of 6240 MT. The learned Counsel appearing for the Petitioner submitted that the figure arrived at by the learned arbitrator according to Measurement Book is factually incorrect and took me through the Measurement Book. But it is not necessary, in my opinion, to go into the question whether the finding recorded by the learned arbitrator that as per the Measurement Book 129.67 MT of steel was consumed is correct or not because the learned Counsel appearing for the Corporation/Respondent No.1 submitted that the controversy was whether the Petitioner is entitled to be paid according to entries in the Measurement Book or according to the Running Bill. The learned Counsel submits that the Petitioner has already been paid as per the Running Bill for 393.50 MT of steel.

The Corporation is not claiming any refund or adjustment of the amount paid according to Running Bill to the Petitioner against steel. It is clear from the submission of the learned Counsel that though the Corporation is not claiming any refund or adjustment of the amount paid to the Petitioner as per the Running Bill towards steel, i.e. the price of 393.50 MT of steel, but it appears that the arbitrator in the final bill has provided for adjustment of the amount because in the final bill prepared by the learned arbitrator, which is part of the earlier award quoted above, he has held that the Petitioner is entitled to payment of the price of 129.67MT steel. Perusal of the award made after the remand shows that the arbitrator has not made any correction against items Nos. 98/733 and 99/734. Thus, though the stand of the Corporation is that the Corporation is not claiming refund or adjustment of the amount paid according to the Running Bill to the Petitioner against steel, the award provides for the same. In this view of the matter, therefore, in my opinion, the award to that extent will have to be modified. From the material available on record it is not clear as to at what rate the Corporation paid the Petitioner for 263.83 MT of steel (393.50 as per

R.A.Bill (minus) 129.67 as per Measurement Book = 263.83) Perusal of the earlier award , relevant portion of which is quoted above, shows that the Petitioner was paid of at two rates for the steel. He was paid at the rate of 7150 per MT for 17.36 MT of steel and at the rate of 6240 per MT for 112.33 MT of steel. As for larger part of the steel the Petitioner was paid at the rate of 6240 per MT, in my opinion, it would be appropriate to award the Petitioner the amount at the same rate. Thus the Petitioner would be entitled to payment of the amount of Rs.16,46,299.20 (263.83 MT x Rs.6240 per MT). In the final award the arbitrator has held that the Respondent/Corporation is entitled to an amount of Rs.3,39,150.64 from the Petitioner. Now, this figure is obviously arrived at after making adjustment for the price of the steel as observed above, and therefore, now the correction that will have to be made is that the Petitioner would be entitled to receive the money as follows:

Rs. 16,46,299.20

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Rs. 3,39,150.64

Total: Rs. 13,07,148.56

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5. Thus, the Petitioner would be entitled to receive from the Corporation Rs.13,07,148.56. So far as question of grant of interest is concerned, in my opinion, the Petitioner would be entitled to interest from the date of reference of the dispute till the date of realisation. The date of reference is 11-11-1994. In my opinion, considering the present situation of rate of interest, it would be appropriate to award the interest at the rate of 9% p.a. The Respondent No.1 is thus directed to pay to the Petitioner an amount of Rs.13,07,148.56 with interest at the rate of 9% p.a. from 11-11-1994 till the date of realisation.

6. So far as the second question is concerned, the learned Arbitrator has held that the Petitioner has not been able to establish that the National Saving Certificates were handed over by the Petitioner to the Corporation against this contract. Even the receipt which has been produced before me by the Petitioner does not show that certificates were handed over to the Corporation against this contract.

Therefore, I do not find any error in the finding that is recorded by the learned arbitrator in this behalf.

7. It was urged on behalf of the Corporation that the present petition is barred by the law of limitation and proper ground of condonation of delay has not been made out. The dates that are relevant for that purpose are that the award was made on 25-6-1999. Notice of final award was served on the deceased predecessor of the Petitioner concern on 23-7-2001. He expired on 11-8-2001. The present Petitioner, who is the legal representative, claims that he was not aware of the service of notice of final award and he came to know about the existence of the award when a notice of the petition filed by the Corporation for getting the award converted into decree was served on him on 1-10-2003 and thereafter he immediately filed this petition on 3-11-2003. According to the Petitioner, Oberoi Construction Co. was initially a partnership firm, but in 1989 that firm was dissolved and Mr.C.R. Oberoi became the proprietor of the firm. The Petitioner has produced documents to substantiate his case that the firm was dissolved in 1989 and the deceased Mr.C.R. Oberoi

was the proprietor of the firm. Thus, it is clear that on the date on which the notice of filing of the award was served on Mr.C.R. Oberoi, he was the proprietor of the firm. The averments in the petition that the present Petitioner was not aware of existence of the award till October, 2002 is not denied by the Respondent No.1/Corporation by filing affidavit in reply and therefore, in my opinion, taking overall view of the matter and considering that even according to the stand taken by the Corporation the Petitioner is entitled to certain amounts, in my opinion, it would be appropriate to condone the delay in filing the petition. The delay in filing the petition is accordingly condoned. The award made by the learned arbitrator is modified. It is held that the Petitioner is entitled from the Respondent No.1 to the amount of Rs.13,071.48.56 with interest at the rate of 9% p.a. from 11-11-1994. It is accordingly so ordered. The Respondent is directed to pay costs of this petition to the Petitioner as incurred by the Petitioner. Petition disposed of.

At the request of the learned Counsel appearing for the Respondent No.1, execution of the award is stayed

for a period of four weeks.

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